

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Albert L. Fisher, M.D.,)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No. 1:13-cv-00152-WCG
)	Honorable William C. Griesbach
Aurora Health Care, Inc.,)	
)	
Defendant.)	
)	

DEFENDANT AURORA HEALTH CARE, INC.'S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Aurora Health Care, Inc., by and through its undersigned counsel, hereby moves the Court to dismiss with prejudice Plaintiff Albert L. Fisher, M.D.'s Complaint. The grounds for this Motion are more fully stated in Defendant's supporting Memorandum and are summarized as follows:

- (1) Plaintiff cannot plead either antitrust standing or an antitrust injury necessary to sustain his antitrust claims;
- (2) Staffing decisions of the sort alleged by Plaintiff are generally not subject to potential antitrust liability as a matter of law;
- (3) Plaintiff has not pled facts sufficient to support his claim of a conspiracy, nor his other antitrust theories;
- (4) Plaintiff cannot succeed on his essential facility claim;
- (5) Plaintiff's state-law claims are barred by a narrowly tailored release signed by the Plaintiff, or must be dismissed in the absence of federal jurisdiction after the dismissal of Plaintiff's antitrust claims; and

(6) Each of Plaintiff's state-law claims fails for reasons stated in the accompanying Memorandum.

This Motion is based on the points and authorities set forth in the accompanying Memorandum, which are incorporated herein by reference, and the Declaration of Cheryl Borgardt and the exhibits thereto.

WHEREFORE, Defendant Aurora Health Care, Inc. requests that the Court dismiss with prejudice all claims and causes of action in Plaintiff Albert L. Fisher, M.D.'s Complaint.

Dated this 29th day of March, 2013.

Respectfully submitted,

/s/ David W. Simon

David W. Simon, WI Bar No. 1024009
Michael D. Leffel, WI Bar No. 1032238
Adam E. Crawford, WI Bar No. 1056803
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Telephone: (414) 297-5519 (DWS)
Fax: (414) 297-4900
Email: dsimon@foley.com (DWS)

Attorneys for Defendant Aurora Health Care, Inc.